



Administration  
& Management

OFFICE OF THE SECRETARY OF DEFENSE  
1950 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1950

April 16, 1986

## ADMINISTRATIVE INSTRUCTION NO. 91

SUBJECT: Cooperation with the Office of the Special Counsel of the Merit Systems Protection Board

References: (a) [DoD Directive 5500.19](#), "Cooperation with the Office of Special Counsel of the Merit Systems Protection Board," December 6, 1985

### 1. PURPOSE

This Instruction:

1.1. Implements reference (a).

1.2. Provides policy, assigns responsibilities, and establishes procedures for cooperating with the Office of the Special Counsel (OSC) of the Merit Systems Protection Board (MSPB) in fulfilling the responsibilities of the OSC to conduct investigations of alleged prohibited personnel practices or other allegations of improper or illegal conduct.

### 2. APPLICABILITY AND SCOPE

This Instruction:

2.1. Applies to all organizational entities of the Office of the Secretary of Defense (OSD); the Organization of the Joint Chiefs of Staff (OJCS); and to all activities serviced by Washington Headquarters Services (WHS) (hereafter referred to collectively as "OSD Components").

2.2. Does not restrict the Inspector General, Department of Defense (IG, DoD) in coordinating individual cases with the OSC where concurrent jurisdiction exists.

### 3. POLICY

It is the policy of the Department of Defense to ensure that all civilian personnel actions taken by management officials, civilian and military, are taken in accordance with established merit system principles. If a prohibited personnel practice occurs, it is the personnel management responsibility of each Component official to take corrective action, and when appropriate, initiate a disciplinary action.

### 4. RESPONSIBILITIES

4.1. The Deputy Assistant Secretary of Defense (Administration) (DASD(A)) has been designated as the Senior Management Official for the OSD and WHS-serviced activities concerning allegations by the OSC of prohibited personnel practices or other illegal or improper acts, and shall:

4.1.1. Serve as the initial point of contact (POC) in providing assistance to the OSC in conducting investigations of alleged prohibited personnel activities, with the attorney of record for the Component or individual respondent being the POC for matters in litigation.

4.1.2. Monitor OSC investigations.

4.1.3. Determine, if possible, whether an investigation is being or has been conducted that duplicates in whole or in part the proposed or incomplete investigation by the OSC, and forward that information to the OSC to avoid unnecessary investigations.

4.1.4. Inform the General Counsel, Department of Defense (GC, DoD), of any OSC investigation and consult with the GC, DoD, on any legal issue related to the investigation.

4.1.5. Ensure that Component personnel being investigated are given timely legal and policy advice, through arrangements made by the Liaison Officer, on (DoD Directive 5500.19 (reference (a))):

4.1.5.1. The nature and basis for an OSC investigation.

4.1.5.2. The authority of the OSC.

4.1.5.3. The rights and duties of Component personnel.

4.1.6. Inform the IG, DoD, of any OSC investigation of an alleged prohibited personnel practice that has been identified as having resulted from a whistleblower complaint or involves an allegation of illegal or improper conduct.

4.1.7. Ensure that appropriate OSD Component personnel are completely informed of the nature and basis for an OSC investigation, as well as the rights and duties of OSD Component personnel regarding such investigations.

4.1.8. Forward all allegations of improper or illegal conduct referred by the OSC through the OSD to the IG, DoD.

4.1.9. Ensure that any corrective or disciplinary action considered appropriate because of facts disclosed by an investigation is accomplished by:

4.1.9.1. Referring recommendations made by the OSC for corrective action to the responsible management official.

4.1.9.2. Seeking OSC approval of a proposed disciplinary action to be made against an employee for an alleged prohibited personnel practice or illegal or improper act under investigation by the OSC when it is determined that such discipline is warranted.

4.1.9.3. Ensuring that disciplinary action against an employee judged to be at fault, following completion of an OSC investigation, has been considered to avoid the need for a proceeding before the MSPB.

4.1.9.4. Ensuring that the information concerning members of the Armed Forces, who are found by the Component to have committed a prohibited personnel practice or other violation of this Instruction that involves civilian personnel, is referred to the appropriate military authority.

4.2. The Director, Organizational and Management Planning (DO&MP), Office of the DASD(A) has been designated as the Senior Management Officials Liaison Officer for any OSC Investigator who may initiate an investigation within the organizational entities covered by this Instruction, and shall:

4.2.1. Assist the Senior Management Official in carrying out the responsibilities in paragraph 4.1., above.

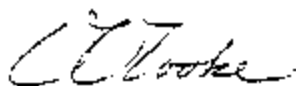
4.2.2. Assist the OSC investigator.

4.2.3. Ensure that all OSC requests for documents are in writing.

4.2.4. Process OSC requests, as well as all requests for interviews.

5. EFFECTIVE DATE

This Instruction is effective immediately.



David O. Cooke  
Deputy Assistant Secretary of Defense  
(Administration)